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No. 84-43

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

THE GOOD SAMARITAN HOSPITAL OF MARYLAND, INC.,
Appellant,

v.

THE STATE OF MARYLAND,
ADELE WILZACK, SECRETARY OF THE MARYLAND
DEPARTMENT OF HEALTH AND MENTAL HYGIENE,
MARYLAND PODIATRY ASSOCIATION,
AND ANTHONY J. COSTA,
Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS OR AFFIRM

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Adele Wilzack, Secretary,
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COUNTERSTATEMENT OF QUESTION PRESENTED

Does § 19-351(b) of the Health-General Article of the Annotated Code of Maryland (which provides that if a hospital elects to offer medical or surgical foot care it must grant podiatrists the privilege to practice in that institution) violate Article I, § 10 of the Constitution of the United States, by impairing unconstitutionally the 1920 corporate charter of The Good Samaritan Hospital of Maryland, Inc., in view of a longstanding and pre-existing power to amend or revoke the charter, reserved to the State under the Constitution of Maryland?

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THE GOOD SAMARITAN HOSPITAL
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Appellant

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STATE OF MARYLAND,
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MARYLAND PODIATRY ASSOCIATION,
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Appellees

On Appeal from the Court of Appeals of
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MOTION TO DISMISS OR AFFIRM

Appellees, the State of Maryland, Adele Wilzack, Secretary of the Maryland Department of Health and Mental Hygiene, the Maryland Podiatry Assoc-

iation and Anthony J. Costa, D.P.M., in accordance with Rule 16, move the Court to dismiss the appeal herein for want of a substantial Federal question or, in the alternative, to affirm the judgment of the Court of Appeals of Maryland because it is manifest that the questions on which the decision of the cause depends are so insubstantial as not to merit plenary review.

COUNTERSTATEMENT OF THE CASE

I.

THE STATUTE INVOLVED

This appeal addresses the validity of § 19-351(b) of the Health-General Article of the Annotated Code of Maryland. Section 19-351(b) was enacted to ensure that any citizen of the State of Maryland requiring medical or surgical foot care in a hospital setting has the

freedom to receive that care from a qualified podiatrist. The statute does not require a hospital to offer any service, including medical or surgical foot care. However, any hospital which chooses to offer medical and surgical foot care is required to amend its rules, regulations and bylaws to grant privileges to qualified podiatrists.[1] If a hospital does elect to offer medical or surgical foot care it need not grant privileges to all licensed podia-

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[1] In contrast to Maryland's less restrictive statute, numerous other jurisdictions have enacted legislation which appears to require all hospitals in these states to extend privileges to qualified podiatrists. E.g., Arizona Rev. Stat. Ann. §36-435 (1983 Supp.); California Health and Safety Code § 1316 (Deering, 1974); Massachusetts Gen. Laws Ann. Ch. 111 §51C (West); N.Y. Public Health Law § 2801-b (Consol. 1977); Ohio Rev. Code Ann. §3701.351 (1982 Supp.) (Page); Oklahoma Stat. Ann. Title 63 §§1-707a and b; Oregon Rev. Stat. §441.063 (West). Appellees' research has revealed no cases in which these enactments were challenged.

trists.[2] Each hospital may set its own standards for granting such privileges.

II.

THE PROCEEDINGS BELOW

The Good Samaritan Hospital of Maryland, Inc. ("Good Samaritan") was granted a charter by the State of Maryland on February 10, 1920, subject to the provisions of the Constitution of Maryland and the State's corporation

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[2] Pursuant to the Maryland Podiatry Act, Health Occupations Article §§ 15-101 to -602, Annotated Code of Maryland, podiatrists are licensed to diagnose or surgically, medically or mechanically treat any ailment of the human foot, subject to certain specific limitations. See Health Occupations Article §15-101(f), Annotated Code of Maryland. Licensed podiatrists must meet stringent educational standards, must pass an examination and must participate in continuing education to maintain competence. See Health Occupations Article §§ 15-302 and 308(d), Annotated Code of Maryland. Additional training is available to podiatrists, which is beyond that required for licensure.

law.[3] The charter itself is silent on the power of the Hospital's Board of Trustees to pass bylaws and to control the selection of medical staff. The purpose of the corporation, stated in the charter, is to erect and maintain a hospital and to receive and administer the funds set aside for this purpose under the Will of Thomas O'Neill. Good Samaritan opened its doors in 1968. The

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[3] At the time the Good Samaritan charter was granted, the State of Maryland retained an expressly reserved power to alter or revoke the document, pursuant to a longstanding and pre-existing provision of the State Constitution of Maryland. Article III, § 48, Constitution of Maryland. Provisions of this nature were commonly inserted by states into charters, via constitution, statute or express provision, for the purpose of avoiding the effect of the holding in Dartmouth College v. Woodward 17 U.S.(4 Wheat.) 518 (1819). See, Hale, The Supreme Court and the Contract Clause: II, 57 Harv. L. Rev. 621, 637 (1944). See also, Board of Regents v. Trustees, 206 Md. 559, 112 A.2d 678, cert. denied, 350 U.S. 836 (1955); Webster v. Cambridge Female Seminary, 78 Md. 193, 28 A. 25 (1893).

Board of Trustees has elected not to offer certain services, such as obstetrics and pediatrics, and to include other services, such as medical and surgical foot care.

In 1979, the General Assembly of the State of Maryland enacted §19-351(b) of the Health-General Article of the Annotated Code of Maryland.[4] The statute's passage was preceded by a detailed review in various legislative committees, accompanied by expressions of support and opposition by individual podiatrists and physicians, as well as various professional associations.

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[4] House Bill 637 was enacted as Chapter 571, Laws of Maryland 1979. Initially, the statute was codified at Article 43, §562(b), Annotated Code of Maryland. Subsequent to the initiation of the proceedings below, the statute was recodified in its present form without substantive change.

On July 24, 1980, Good Samaritan filed a Petition for Declaratory Judgment in the Superior Court for Baltimore City (the "trial court") alleging, inter alia, that the statute usurped the authority of Good Samaritan to make its own management decisions, that the charter granted the Hospital the right to make such decisions free from State interference and, for that reason, the statute violated Article I, §10 of the Constitution of the United States. Named as respondents were the State of Maryland, the Maryland Department of Health and Mental Hygiene and the Maryland Podiatry Association. Subsequently, Anthony J. Costa, D.P.M. intervened as co-respondent. Dr. Costa has been denied staff privileges at Good Samaritan but is permitted to treat patients in the Hospital's out-patient unit.

Good Samaritan presented three witnesses to show the statute's impact on the Hospital: James Oakey, President and Chief Executive Officer, Robert Parker, M.D., Vice President for Medical Affairs and Patricia K. Smythe, Vice-Chairman of the Board of Trustees. These witnesses contended that compliance with §19-351(b) would have a negative impact on the Hospital in that its resources would be taxed by the additional practitioners. Also, the Hospital's representatives testified that the statute contravenes what it believes to be its right to manage the institution without State interference.

Three hundred seventy-five physicians presently have privileges at Good Samaritan. In addition, an unlimited number of physicians have the option of using the facilities either by obtaining temporary privileges or by co-

admitting a patient with a physician with full privileges.[5] No evidence was submitted to show that Good Samaritan has any plans to curtail the number of physicians with access to the Hospital in view of its allegedly limited resources.

Testimony established that Good Samaritan is affiliated with two medical schools and that research is conducted at the Hospital. However, no witnesses testifying on behalf of Good Samaritan stated that granting privileges to podiatrists would prevent the Hospital from continuing to serve as a teaching or research facility.

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[5] For a full discussion of the distinction between medical staff membership and hospital staff privileges, see Hollowell, The Growing Legal Contest - Hospital Privileges for Podiatrists, 23 St. Louis L.J. 491, 493-94 (1979); see also 65 Official Op. of the Att'y Gen. of Md. 237 (1980).

Testifying in the trial court on behalf of the Appellees was Michael L. Michetti, D.P.M., then President of the Maryland Podiatry Association. Dr. Michetti explained why, for the benefit of the practitioner and the patient, certain podiatric surgical procedures are best performed in a sterile hospital environment where general anesthesia is available. Dr. Michetti testified that he has had privileges at several hospitals for some time but that prior to the enactment of §19-351(b), many podiatrists had faced problems in obtaining hospital privileges.

The evidence demonstrated that, at the time of the statute's enactment, a number of the hospitals in the State of Maryland voluntarily granted privileges to podiatrists. However, the list revealed that all of these thirteen hospitals were located in either Prince

George's County or the Baltimore metropolitan area. Thus, no hospital in Western Maryland or Montgomery County permitted patients to have their inpatient foot surgery performed by a qualified podiatrist.

Claiming reliance upon the rulings of the Court in Allied Structural Steel Co. v. Spannus, 438 U.S. 234, reh'g denied, 439 U.S. 886 (1978) and United States Trust Co. v. New Jersey, 431 U.S. 1, reh'g denied, 431 U.S. 975 (1977), as interpreted by the Maryland Court of Appeals in Robert T. Foley Co. v. WSSC, 283 Md. 140, 389 A.2d 350 (1978), the Honorable J. Harold Grady, then Chief Judge of the Circuit Court for Baltimore City (now retired) held that the statute violated Article I, §10 of the Constitution of the United States by impairing the Good Samaritan charter.

The trial court found that the Good Samaritan charter was a contract which obligated the State never to pass any law which would affect the managerial prerogatives of the Hospital. By requiring Good Samaritan to accept podiatrists if it chose to offer foot care, the trial court found the statute to have impaired the contract because the Hospital's resources would be affected by the additional practitioners. To this end, the trial court held expressly that any statute which causes a person to expend <u>any</u> resources, no matter how few, to comply with a law causes a compensable "taking" under the State's power of eminent domain. (App. 32a-33a).[6] Thus, the trial court found that the impairment caused by the statute was unconstitu-

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[6] "App." refers to the Appendix accompanying Good Samaritan's Jurisdictional Statement.

tional because compliance "took" Good Samaritan's resources and no compensation was paid to the Hospital.[7]

The Court of Appeals of Maryland (the "appellate court") vacated the judgment of the trial court. The appellate court agreed that the Good Samaritan charter constituted a contract between the Hospital and the State. In contrast with the trial court, the appellate court held that the statute did not impair the Hospital's charter because provisions of both the State's general corporation law and the Constitution of Maryland which were in effect at the granting of the charter reserved in the State a power to repeal or modify corporate charters. The appellate court

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[7] It is worthy of note that in its Jurisdictional Statement, Good Samaritan has not continued to urge this unusual theory upon the Court.

sustained the statute as a valid exercise of this expressly reserved power as well as a legitimate manifestation of the State's impliedly reserved police power.

The appellate court also rejected additional arguments raised by Good Samaritan at trial and on appeal, that the statute violates the due process and equal protection guarantees of the Fourteenth Amendment to the Constitution of the United States and Article 24 of the Constitution of Maryland and constitutes a "special law" for the benefit of podiatrists, prohibited by Article III, §33 of the Constitution of Maryland. Rather, the appellate court held that the statute was supported by a rational basis and did not impose a disproportionate burden on any hospital or confer a disproportionate benefit on any single podiatrist.

ARGUMENT

THIS CASE DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

A substantial federal question is not presented in this case because the decision by the appellate court reflects the application of well-established principles of law, based upon decisions of this Court interpreting the Contract Clause of the Constitution of the United States. The appellate decision below rests upon its finding that the Maryland General Assembly's enactment of § 19-351(b) constitutes another manifestation of the State's inherent police power. The decision merely reaffirms the principle that contracts may not be used as a vehicle for the avoidance of the State's power to enact laws for the public benefit.

Since the decisions of the Court in Allied Structural Steel Co. v.

Spannus, and United States Trust Co. v. New Jersey, some degree of academic interest has been renewed in the use of the Contract Clause as a vehicle for judicial review of legislation which may affect contracts, be they between private parties or between a State and private individuals.[8] In these decisions, the Court outlined a multi-part test for determining when a State law has unconstitutionally impaired a pre-existing contract.

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[8] See Schwartz, Old Wine in Old Bottles? The Renaissance of the Contract Clause, 1979 Sup. Ct. Rev. 95; Comment, Constitutional Law: The Contract Clause - Still a Viable Means to Analyze and Nullify State Legislation, 17 Washburn L.J. 416 (1978); Note, Rediscovering The Contract Clause, 97 Harv. L. Rev. 1414 (1984); Note, A Process-Oriented Approach to the Contract Clause, 89 Yale L.J. 364 (1980); Note, Revival of the Contract Clause: Allied Structural Steel Co. v. Spannus and United States Trust Co. v. New Jersey, 65 Va.L.Rev. 377 (1979).

Where a public contract is at issue, the preliminary inquiry must be whether the state has a reserved power to amend, by virtue of state law or an express provision of the contract. United States Trust Co., 431 U.S. at 23; Phillips Petroleum v. Jenkins, 297 U.S. 629, 634 (1936) ("The reservation of power to amend is a part of the contract between the State and the Corporation and therefore § 10 of Art. I of the Federal Constitution does not apply."); see also B. Wright, The Contract Clause of the Constitution 176-77, 178 n.263 (1938). In the absence of such a reserved power, the first level of inquiry required by the test is:

> Whether the State law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the State legislation must clear.

Allied Structural Steel Co. v. Spannus, 438 U.S. at 244-45. If the State law impairs substantially the contract, the legislation will yet be upheld so long as the impairment is founded upon legitimate conditions which are reasonable given the public purpose justifying the law's adoption. United States Trust Co. v. New Jersey, 431 U.S. at 221; Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400 (1983).

The Court has indicated that a number of factors play an important role in measuring the degree of impairment and the appropriateness of any conditions imposed. See Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 428 (1934). An important consideration is whether the contract impaired by the legislation relates to an industry which has been regulated in the past. Energy Reserves Group, Inc. v. Kansas Power & Light Co.,

459 U.S. at 416; Veix v. Sixth Ward Bldg. & Loan Ass'n., 310 U.S. 32 (1940).

A. The Maryland Court of Appeals Held Correctly That Section 19-351(b) Does Not Impair Any Obligation Created By Good Samaritan's Charter.

All parties are agreed that the charter granted by the State to Good Samaritan constitutes a contract. Dartmouth College v. Woodward, 17 U.S.(4 Wheat.) 518 (1819). However, the charter is silent on the right of the Hospital's Board of Trustees to pass bylaws and control medical staff. The only obligation capable of impairment in the manner suggested by the Hospital is an alleged agreement on the part of the State, arising impliedly from the charter, that the State would never pass any statute affecting the managerial prerogatives of the Good Samaritan Board

of Trustees.[9] Since the charter is silent on this issue, it creates no obligation capable of impairment. Charles River Bridge v. Warren Bridge, 36 U.S. (11 Pet.) 420, 546 (1837) ("[I]n grants by the public, nothing passes by implication."); Fertilizing Co. v. Hyde Park,

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[9] Good Samaritan cites Levin v. Sinai Hospital of Baltimore City, 186 Md. 174, 46 A.2d 298 (1946) and Jefferson Parish Hosp. Dist. No. 2 v. Hyde, ___ U.S. ____, 104 S.Ct. 1551 (1984) in support of the view that hospitals possess some inherent right to exclude an entire class of health-care practitioners, in the face of legislation to the contrary. (Jurisdictional Statement pp. 7-8). However, the appellate court expressly rejected any attempt at reliance upon its previous holding in Levin to support this argument. Addressing itself to its earlier decision in Levin, the appellate court held that any rights a hospital may have to accept and reject even individual physicians are subject to the state's police power. So too, Jefferson Parish Hospital recognized the right of a hospital to enter into exclusive contracts with a particular group of specialists. Neither case upheld the right of a hospital to exclude an entire class of health-care practitioners in the face of a police power statute assuring access.

97 U.S. 659, 666 (1978) ("The affirmative must be shown. Silence is negation and doubt is fatal to the claim. This doctrine is vital to the public welfare."). It cannot be presumed or implied that the terms of the charter preclude the legislature from enacting §19-351, in the face of the State's reserved police power.

The only arguable way by which the power to pass bylaws and control medical staff could be said to be a part of the charter is by virtue of the legal principle that all laws in existence at the time of the contract's making are considered to be a part of the agreement,

and were contemplated by the parties.[10] El Paso v. Simmons, 379 U.S. 497, reh'g denied, 380 U.S. 926 (1965); Atlantic Coast Line R.R. Co. v. City of Goldsboro, 232 U.S. 548 (1914); Dennis v. City of Rockville, 286 Md. 184, 189-90, 406 A.2d 284, 287 (1979).

The powers of the Board of Trustees are delineated in Corporations

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[10] Good Samaritan's Charter was accepted by the State in 1920. At the time, Article 23, §10, Maryland Annotated Code of Public General Laws of 1918, provided, in part, as follows:

> The board of directors may exercise all of the powers of the corporation, except such as are by-laws [sic] or by the charter or by the by-laws conferred upon or reserved to the stockholders or members.

Under Article 23, §12, the 1918 Code provided that unless there are no shares of stock outstanding and entitled to vote,

> [t]he power to make, alter and repeal bylaws shall reside in the members or stockholders and not in the directors.

and Associations Article §2-401(b), Annotated Code of Maryland which provides:

> All powers of the corporation may be exercised by or under the authority of the board of directors except as conferred on or reserved to the stockholders by law or by the charter or bylaws of the corporation.

The general powers of the corporation referenced above include, in part, the power to

> [a]dopt, alter, and repeal bylaws not inconsistent with law or its charter for the regulation and management of its affairs.

Corporations and Associations Article §2-103(15), Annotated Code of Maryland (emphasis added). Finally, those bylaws the corporation is empowered to adopt

> may contain any provisions not inconsistent with law or the charter of the corporation for the regulation and management of the affairs of the corporation.

Corporations and Associations Article §2-110(a), Annotated Code of Maryland (emphasis added).

In addition, the Good Samaritan charter, granted in 1920, is subject to previously enacted Article III, §48 of the Constitution of Maryland which provides, in part:

> All charters granted, or adopted in pursuance of this section, and all charters heretofore granted and created, subject to repeal or modification, may be altered, from time to time, or be repealed; . . .

This provision expressly reserved to the State the power to amend charters such as that granted to Good Samaritan.

The appellate court interpreted the above past and present provisions of the Constitution of Maryland and general corporation law of the State, to constitute

> plain manifestations of the well-settled principle

> that a corporation holds its charter subject to the constitutional exercise of the State's reserved police power to legislate in the public interest. (App. 10a).

In the pending action, the appellate court below held correctly that because the Good Samaritan charter contained an expressly reserved power to amend, no obligation of the contract had been impaired. This finding is consistent with the decision of this court in Atlantic Coastline R.R. Co. v. Goldsboro, 232 U.S. 548 (1914). In that case, the Court considered a municipal law which restricted a railroad's use of certain tracks which, over time, had become surrounded by urban development. The Court upheld the legislation under the theory that the police power, impliedly reserved to the State, enabled the city to pass laws to protect the public health, safety, comfort and welfare.

The Court noted that the Supreme Court of North Carolina had upheld the statute as an exercise of the State's express power to alter or repeal corporate charters, which was allegedly reserved in the State's Constitution. While the Court was unable to find the principle referenced in the North Carolina Constitution, it noted: "If the right of repeal was indeed thus reserved, the result is obvious." [citations omitted]. Id. at 556. Whatever the infirmity in the North Carolina Constitution, the general corporation law and Constitution of Maryland are clear in their express reservation of this power. Thus, as the Court noted, the lack of any impairment caused by the statute is obvious.

All parties are presumed to have been aware of the existing State law at the execution of the contract. Under

State law, the charter contained an expressly reserved power in the State to amend or revoke the contract. This must have been a part of the central understanding of the parties to the contract. El Paso v. Simmons, 379 U.S. 497, reh'g denied, 380 U.S. 926 (1965). While it is arguable that some minimal impairment of Good Samaritan's resources may result from its compliance with §19-351(b), there has been no impairment of its contract with the State. Under the formula discussed in United States Trust Co. and Allied Structural Steel, it is only when the contract has been impaired that an assessment of the reasonableness and purpose of the conditions imposed by the legislation need be made.

B. Assuming Arguendo That Section 19-351(b) Impairs Good Samaritan's Charter, the Maryland Court of Appeals Applied The Appropriate Standard of Review.

In its Jurisdictional Statement, Good Samaritan argues that the appellate court is to be faulted for failing to apply "strict judicial scrutiny" to its analysis of the alleged impairment caused by §19-351(b) because the State is a party to the contract. (Jurisdictional Statement p. 9)[11] In United States Trust Co., the Court considered a statutory amendment to a

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[11] Good Samaritan notes that the appellate court inappropriately applied the "rational basis" test in reviewing the statute. While §19-351(b) is supported by a rational basis, the portions of the appellate court's opinion cited by the Hospital relate to its analysis of the due process and equal protection claims raised below. Although the appellate court upheld the statute in the face of these challenges, these issues are not brought before the Court. (Jurisdictional Statement p. 2 n.1).

covenant between the States of New York and New Jersey and certain bondholders who held bonds issued by the Port Authority of New York and New Jersey. The agreement contained no specific reserved power to amend. However, the States relied upon their implicit police power to justify legislation which abrogated express provisions of the bond agreement.

Even assuming that the standard of review applied by the Court in United States Trust Co. is applicable to the present case, Good Samaritan has mischaracterized the relevant test. In Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59, 83 (1978), the Court noted that it had applied an "intermediate" standard of review in United States Trust Co. In addition, the Court has continued to reject attempts to use the standard articulated in United States Trust Co. to strike down any

statute on the ground that a public contract had been impaired. E.g., Allen v. Board of Adm. Pub. Emp., 34 Cal.3d 114, 665 P.2d 534, 192 Cal. Rptr. 762 (1983), app. dismissed for want of substantial federal question, ___ U.S. ___, 104 S.Ct. 1262 (1984); AFSCME Councils 6, 14, 65 & 96, AFL-CIO v. Sundquist, 338 N.W.2d 560 (Minn. 1983), app. dismissed for want of substantial federal question, ____ U.S. ____, 104 S.Ct. 1092 (1984); Fidelity Union Trust Co. v. New Jersey, 85 N.J 277, 426 A.2d 488, app. dismissed for want of substantial federal question, 454 U.S. 804 (1981); Lyon v. Fourney, 76 Cal. Rptr. 869 (1969), app. dismissed for want of substantial federal question, 396 U.S. 274 (1970). Correspondingly, the federal appellate courts have almost uniformly refused to invalidate statutes on similar grounds. See, e.g., Arceneaux v. Treen, 671 F.2d

128, 135 (5th Cir. 1982); Local Division 589 Amalgamated Transit Union v. Commonwealth of Massachusetts, 666 F.2d 618 (1st Cir. 1981), cert. denied, 457 U.S. 1117 (1982); City of Atlanta v. Metropolitan Atlanta Rapid Transit Authority, 636 F.2d 1084 (5th Cir. 1981); Baker v. Baltimore County, 660 F.2d 488 (4th Cir. 1981), aff'g, 487 F.Supp. 461 (D.Md. 1980); Agustin v. Quern, 611 F.2d 206 (7th Cir. 1979); Jackson Sawmill Co. v. United States, 580 F.2d 302, 312 (8th Cir. 1978), cert. denied, 439 U.S. 1070 (1979); Andre v. Board of Trustees of the Village of Maywood, 561 F.2d 48 (7th Cir. 1977), cert. denied, 434 U.S. 1013 (1978); contra Continental Ill. Natl. Bank & Trust Co. v. State of Washington, 696 F.2d 692 (9th Cir. 1982), app. dismissed sub nom., Don't Bankrupt Washington Committee v. Continental Ill. Natl. Bank & Trust Co., ___ U.S. ___, 103 S.Ct. 1762 (1983).

In so holding, these appellate courts have recognized the distinction between statutes which rest upon the police power of the state, as opposed to those laws which are intended to alter or rescind the State's financial obligations.

While the Court has recognized that the police power of the State cannot be bargained away, States can enter into binding financial obligations, much like individuals.

> The truth is, States and cities, when they borrow money and contract to repay it with interest, are not acting as sovereignties.

United States Trust Co. v. New Jersey, 431 U.S. at 25 n.23, quoting Murray v. Charleston, 96 U.S. 432, 445 (1878); see also Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. at 412 n.14. Even a financial obligation

incurred by the State may be impaired by a subsequent State law, so long as the legislation is reasonable and necessary to serve an important public purpose. Id. at 25.

This principle of law is the cornerstone of the State's ability to enact laws for the public benefit.

> The States must possess broad power to adopt general regulatory measures without being concerned that private contracts will be impaired, or even destroyed, as a result. Otherwise, one would be able to obtain immunity from state regulation by making private contractual agreements.

Id. at 22; see also Hudson Water Co. v. McCarter, 209 U.S. 349 (1908); Stone v. Mississippi, 101 U.S. 814 (1880); Beer Co. v. Massachusetts, 97 U.S. 25 (1878) (corporation incorporated under state law reserving the State's right to repeal); Phalen v. Virginia, 49 U.S. (8 How.) 163

(1850) (power to forbid lotteries not surrendered). This reserved police power is an implied condition of every contract. East New York Savings Bank v. Hahn, 326 U.S. 230, 232 (1945).

Good Samaritan's attempt to impose a "strict scrutiny" standard upon the Court's review of §19-351(b) is misplaced because the statute does not affect a financial obligation of the State. Rather, §19-351(b) is a manifestation of the State's power to enact legislation pursuant to its police power.[12] Assuming arguendo that the Good

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[12] It is arguable that even if the State wished to vest Good Samaritan with the right to control its own affairs, to the exclusion of the police power, such a contract would be unenforceable as a matter of law.

> In short, the Contract Clause does not require a State to adhere to a contract that surrenders an essential attribute of its sovereignty.

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Samaritan Charter vested in the Hospital some level of managerial independence, the State cannot be said to have relinquished its police power.

The "heightened" or intermediate scrutiny sought by Good Samaritan is appropriate only when the State enters into a contract in a manner similar to a private individual. The rationale for this approach is clear, since parties who enter into financial contracts with the State should not be subject to a risk that the State may alter or revoke the agreement unreasonably, simply by invoking its sovereign power. This sort of contract was not created when the Good Samaritan charter was granted by the State.

Thus, the Court has stated that where the State is a party to a contract

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United States Trust Co. v. New Jersey, 431 U.S. at 23.

and the "self-interest" of the sovereign is at stake, complete deference to a legislative assessment of reasonableness and necessity is not appropriate. In United States Trust Co., the legislation would have benefited the States directly, since it would have enabled the government to expend additional funds without raising taxes.

Section 19-351(b) confers no such benefit upon the State. Rather, its purpose is to safeguard and enhance the public health. If certain hospitals choosing to offer medical and surgical foot care grant privileges to podiatrists, the citizens of the State will benefit. Thus, the standard of review to be applied is that traditionally appropriate for legislation enacted for the public health, safety and welfare. As the Court has stated:

> As is customary in reviewing economic and social regulation, however, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure. East New York Savings Bank v. Hahn, 326 U.S. 230 (1945).

United States Trust Co. v. New Jersey, 431 U.S. at 22-23. Section 19-351(b) is precisely the sort of social legislation to which deference must be paid. Thus, it would not have been appropriate for the appellate court to have applied "heightened scrutiny" in its review of any impairment of the charter caused by the legislation.

C. Section 19-351(b) Is Based Upon Reasonable Conditions And Is Of A Character Appropriate To The Public Purpose Justifying Its Adoption.

The appellate court's decision rests primarily upon its holding that §19-351(b) caused no impairment of the Good Samaritan charter. Nevertheless, in

rejecting the Hospital's due process and equal protection claims, the appellate court endorsed the statute as a legitimate and appropriate means of protecting the public's access to a full range of foot care services. (App. 13a). Even if this Court finds it necessary to consider, as a part of its multi-part Contract Clause analysis, the reasonableness of the legislation, there is no question but that §19-351(b) imposes legitimate conditions which are appropriate, given the law's important public purpose.

The Court has departed in two respects from the literal test expressed in United States Trust Co., that any impairment must be based upon "reasonable and necessary" conditions, appropriate to achieve an important public purpose. First, in Energy Reserves Group, Inc., the Court held that legislation impairing a contract will be sustained, so

long as a "significant and legitimate" public purpose is served. 459 U.S. at 416. Second, in Exxon Corp. v. Eagerton, ____ U.S. ____, 103 S.Ct. 2296 (1983), the Court indicated that the "reasonable and necessary" test need be applied strictly, only when the "sole effect" of the statute is to alter contractual obligations. ____ U.S. at ____, 103 S.Ct. at 2306. Thus, in Exxon Corp., the Court upheld a statute which advanced broad societal interests and, for that reason, was "sharply distinguishable" from the legislation stricken in United States Trust Co. Section 19-351(b) satisfies this standard.

Without support, Good Samaritan alleges that the training received by podiatrists is "significantly less extensive" than that received by physicians (Jurisdictional Statement p. 11 n.10), the fact remains that

podiatrists are trained as specialists in the diagnosis and treatment of ailments of the human foot and that they are licensed to render these services in the State of Maryland. Equally undeniable is the fact that, for the benefit of the patient, some conditions should be treated in a hospital. Finally, it is undisputed that some individuals prefer that such treatment be rendered by a podiatrist.

As noted above, the evidence presented to the trial court revealed that, in the absence of §19-351(b), qualified podiatrists were excluded from certain hospitals and entire parts of the State.[13] Thus, prior to the passage of

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[13] For a detailed discussion of the anti-trust implications of exclusionary practices toward podiatrists, see generally, Kissam, Government Policy Towards Medical Accreditation and Certification: The Antitrust Laws and Other Procompetitive Strategies, 1983 Wisconsin

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the statute, patients in these areas were effectively prohibited from having any qualified podiatrist perform necessary foot surgery upon them as an in-patient in a hospital.

As the appellate court stated:

> The podiatry statute's purpose, plainly evident from its provisions, is to insure that a full range of foot care services offered by qualified podiatrists will be available to the public in hospitals throughout the State.

(App. p. 13a). The appellate court went on to anticipate several additional important public purposes the legislation serves, including safeguarding the public

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L.Rev. 1; Kissam, Webber, Bigus and Holzgraefe, Antitrust and Hospital Privileges: Testing The Conventional Wisdom, 70 Calif. L. Rev. 595 (1982); Hollowell, The Growing Legal Contest - Hospital Privileges For Podiatrists, 23 St. Louis L.J. 491 (1979); Note, Health Professionals' Access to Hospitals: A Retrospective and Prospective Analysis, 343 Vanderbilt L.Rev. 1161 (1981).

health, the enhancement of economic competition and the prevention of discrimination.

Good Samaritan makes the argument that §19-351(b) is "special interest" legislation for the benefit of podiatrists seeking greater access to hospital facilities. Yet, at the same time, the Hospital states that the legislation is not necessary because podiatrists had privileges at a sufficient number of hospitals when the law was passed. These inconsistent arguments deny the facts: that podiatrists were able to treat patients at a limited number of hospitals which voluntarily chose to open their doors to them. If competition from podiatrists reached levels which were "unacceptable" to physicians in a particular community, nothing would prevent those doors from swinging shut. The public would be denied both the

economic benefits competition brings, as well as the freedom of choice of health-care practitioner.

Good Samaritan claims that §19-351(b) is the first step in a series of intrusions into the affairs of private corporations. To the contrary, the statute is only a minor example of the State's broad scheme of regulation of hospitals and the health care industry as a whole.[14] Good Samaritan had every

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[14] Maryland is one of only a few states which, through the Health Services Cost Review Commission, regulates all rates hospitals may charge to all payors, such as Medicare, Blue Cross, private insurers and individual self-pay patients. Health-General Article §§ 19-201 to -222, Annotated Code of Maryland. See Health Services Cost Review Comm'n v. Lutheran Hosp., 296 Md. 17, 459 A.2d 192 (1983). Likewise, hospitals may not build, expand or alter services, over certain thresholds, without approval of the Health Resources Planning Commission. Health-General Article §§ 19-101 to -122, Annotated Code of Maryland (1983 Cum. Supp.). Also, the General Assembly has exercised its police power to compel hospitals, public and Cont'd

reason to expect that such regulation would continue throughout the existence of the Hospital.

Not only is §19-351(b) necessary to accomplish the public purpose justifying its adoption, but the conditions it imposes are resonable ones. The legislation represents a legitimate attempt by the State legislature to protect the health and safety of the public. Impairment of the contract, if any, is an incidental by-product of compliance with the statute.

The Hospital is free to choose whether to offer foot care. If the choice is made to offer the service, any

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private, to accept patients for treatment without regard to race, color or national origin. Health-General Article §19-355, Annotated Code of Maryland. See also Health-General Article §19-348, Annotated Code of Maryland (hospital required to test for cervical cancer) and Health-General Article § 19-350, Annotated Code of Maryland (hospital bill required to contain certain itemized information).

podiatrist need not be granted privileges. Rather, the hospital can set its own quality standards in assessing the credentials of those applying. If the Hospital chooses to offer foot care and is faced with overburdened resources, nothing in the statute prevents the Board of Trustees from allocating resources in an efficient manner, so long as podiatrists and physicians are treated equally.

Compliance with § 19-351(b) results in only a minimal impact upon the affairs of Good Samaritan. It is a minor component of an extensive system of health care regulation, adopted pursuant to the State's police power. By any standard of review, it should be sustained as a legitimate exercise of the sovereign right to protect the public health, welfare and safety.

CONCLUSION

In conclusion, Appellees respectfully submit that Good Samaritan's appeal should be dismissed or the judgment of the Maryland Court of Appeals affirmed, because the decision below was correct, the legal principles involved are neither novel nor unsettled and require no further argument and because a substantial federal question is lacking.

Respectfully submitted,

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